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ECONOMIC COMMISSION FOR EUROPE

**MEETING OF THE PARTIES TO THE CONVENTION ON
ACCESS TO INFORMATION, PUBLIC PARTICIPATION
IN DECISION-MAKING AND ACCESS TO JUSTICE
IN ENVIRONMENTAL MATTERS**

Third meeting
Riga, 11–13 June 2008
Item 6 (a) of the provisional agenda
Procedures and mechanisms facilitating
the implementation of the Convention:
Reports on implementation

IMPLEMENTATION REPORT SUBMITTED BY BELGIUM*

Article 10, paragraph 2, of the Convention requires the Parties, at their meetings, to keep under continuous review the implementation of the Convention on the basis of regular reporting by the Parties. Through decision I/8, the Meeting of the Parties established a reporting mechanism whereby each Party is requested to submit a report to each meeting of the Parties on the legislative, regulatory and other measures taken to implement the Convention, and their practical implementation, according to a reporting format annexed to the decision. For each meeting, the secretariat is requested to prepare a synthesis report summarizing the progress made and identifying any significant trends, challenges and solutions. The reporting mechanism was further developed through decision II/10, which addressed, inter alia, the issue of how to prepare the second and subsequent reports.

* The present document was submitted on the above date due to resources constraints.

I. PROCESS BY WHICH THIS REPORT HAS BEEN PREPARED

1. In Belgium, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) is a “joint” convention, meaning that several authorities are responsible for implementing it: the federal authority and the three federal entities (the Walloon Region, the Brussels-Capital Region and the Flemish Community). Each authority therefore replied internally to this report on matters within its own remit.
2. This document is a synthesis of all four Belgian reports. Belgium considers it not as its official report, but only as a document reflecting the major new points emerging in the second reporting cycle reports.
3. This second national report was coordinated by the Aarhus network, which decided to hold two types of consultation: first, a coordinated national consultation of the four major environmental protection federations in Belgium (which therefore covers all the Belgian reports); and, secondly, a public consultation by each authority on its own report:
 - (a) The consultation of the non-governmental organizations (NGOs) was prepared by the federal authority (see national authority’s report);
 - (b) A press release was drawn up and sent on behalf of the four authorities involved;
 - (c) The public consultation was organized separately by each authority, but also regarding the national portal (national node) www.aarhus.be.

Results of the public consultation

Federal authority: Summary of the comments made by the four federations of NGOs for environmental protection

4. The federal public service has elaborated a questionnaire that measured the public’s knowledge of and experience with the rights of the Aarhus Convention and also gave it the possibility to make comments on the federal report. Two persons filled in this questionnaire. The remarks rather concerned the portal site (www.health.fgov.be), which was considered to be not very user-friendly.
5. The four environmental protection federations also provided a joint position on the federal report. They welcome the public consultation, but underlined some aspects that needed improvement:
 - (a) Concerning the report in general:
 - (i) Not enough description of the practical implementation of the provisions of the convention, which does not help mobilize consultation;
 - (b) Concerning access to information:
 - (i) The needs to make the distinction between popularization and awareness raising on the one hand, and access to information on the other hand (such as existing figures, reports, etc.);

- (ii) The needs to make certain websites more clear and transparent as well as the need for an adequate and recurrent financial support for NGOs;
- (iii) The ignorance of the public regarding the fact that they don't have to demonstrate an interest in order to have access to environmental information;
- (iv) Restrictions and the refusals concerning the access to certain types of information (for example in the nuclear field and the branch agreements);
- (v) The need to render certain information more transparent (for example studies, data concerning pesticides, chemical substances, etc);
- (c) Concerning the participation of the public:
 - (i) The need to mobilise the public;
 - (ii) The need to inform the public on the remarks that were taken into account and the reasons why certain remarks were excluded;
 - (iii) The lack of feedback between the public and the authorities;
- (d) Concerning the access to justice:
 - (i) The difficulties for the environmental associations to access justice effectively, before the Council of State and before the civil and criminal jurisdictions;
 - (ii) The need to modify the law of 12 January 1993 as well as the dispositions of the judicial Code.

Walloon Region: summary of the comments made by the Walloon federation of NGOs for environmental protection

6. The Walloon federation of associations for environment protection recognizes the dynamism of the authority when applying the Aarhus principles. It also welcomes the public consultation process on the report, but regrets that it focuses on legal transposition rather than highlighting practice implementation. This doesn't encourage a wide and rich public involvement.

7. Regarding access to information, the Walloon federation underlines the following:

- (a) The need to distinguish popularization and sensitization policies;
- (b) The need for adequate and sustainable financial support for the NGOs;
- (c) The need to inform the public about their rights without an interest to be stated;
- (d) The remaining unjustified restrictions or refusal for public access to information;
- (e) The some information still not accessible electronically;
- (f) The need to have full access to datas on emissions and to databases where datas on emission are collected.

8. Concerning the second pillar, the federation considers that the public should have more possibilities to intervene in the decision-making process required for an environment impact assessment study. A lack of relay between the public and the authority is also in the public participation process.

9. Finally, the federation sees a need for reinforcing the links between the Bench and the administration in charge of repressive measures.

Flemish Region: Summary of the comments made by the Flemish Federation of NGOs for environmental protection

10. Number of reactions received: one for the BBL (the environmental association Federation of the Flemish Environmental Movement), one from a private person and the advice of the Mina Council (Environment and Nature Council of Flanders).

11. The advice of the Mina Council related to the procedure of the format of and the participation in the draft report on the one hand and contained a number of suggestions to complete the draft report on the other hand. These suggestions – taking the deadline into account – have been followed as much as possible.

12. The other reactions contained a number of policy suggestions to improve the right to access to environmental information, participation and access to appeal procedures, inter alia:

- (a) The need for more and orderly electronic environmental information
- (b) The improvement of practical arrangements for participation: e. g. via the Internet, longer opening hours, widespread announcements, participation in an earlier stage;
- (c) The advice of the strategic advisory councils should be asked in an earlier stage.

Brussels-Capital Region: Summary of the comments made by the Brussels federation of NGOs for environmental protection

13. The Brussels federation welcomes the public participation process, but regrets that it focuses mainly on the legal transposition of the convention. According to the federation, the presentation of the report, due to its technical nature did not encourage public participation. A more readable document should have been written for the general public. The federation also regrets that the present report is a simple update of the first report, and that it only reflects the competences of the Brussels administration for the environment and not the competences of the municipalities (“19 communes”).

14. The federation highlights the following points:

- (a) The majority of citizens is not aware of their rights resulting from the convention;
- (b) Popularization is necessary but the federation considers that authorities must also give access to technical and scientific information such as raw data;
- (c) There is not enough financial and political support for the associations active in participation processes;
- (d) Too many restrictions exist due to economical reasons on information such as land? inventory.

15. Concerning the second pillar, the federation considers that the public should have more possibilities to intervene in the decision-making process leading to an environmental impact study. In particular, the time period given to the public to react is too short.

16. Finally, the federation considers that the third pillar of the Convention generates the most significant difficulties. An individual or an association encounters too many difficulties when trying to access justice and is too often unsuited, on the basis of their interest, to act.

II. PARTICULAR CIRCUMSTANCES RELEVANT FOR UNDERSTANDING THE REPORT

17. In constitutional terms, Belgium has since 1993 been a federal State comprising three Regions and three Communities. As a consequence, environmental competencies are exercised jointly by the Federal Authority and the three Regions. The three Regions are distinct federal entities that are not subordinate to the Federal Authority or the other Regions. They exercise their own powers in accordance with the territorial basis demarcating their geographical remit. The bulk of environmental policy, such as water, air, waste, nature conservation, rational energy use and planning, and regional development, comes within the remit of the Regions.

18. The Federal Authority has absolute jurisdiction in the field of limited environmental protection, i.e. transit of waste, import, export and transit of protected non-indigenous species, protection of the North Sea, product standards (e.g. the environmental standardisation of products before they are placed on the market) and the nuclear energy sector. Furthermore, the Federal Authority retains full responsibility for the judicial aspects of “access to justice”, with the Regions having responsibility only for non-judicial administrative appeals.

19. The Convention is considered a “joint” convention, meaning that it has legal effect not only in the jurisdictional remit of the Regions but also in that of the Federal Authority.

III. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE GENERAL PROVISIONS IN PARAGRAPHS 2, 3, 4, 7 AND 8 OF ARTICLE 3

Federal authority

Article 3, paragraph 2

20. A new law relating to public access to information on environmental matters came into existence on 5 August 2006. Within its framework, a special information desk for the public was set up.

Article 3, paragraph 3

21. Awareness campaigns and educational aids on subjects that come under the Federal State’s environmental remit are developing.

Article 3, paragraph 4

22. Since 2001, the four federations of environmental protection associations have received an annual federal grant towards each federation’s running costs. Ad hoc grants are also regularly

awarded to other associations working in the environmental field, including on health and environment and legal issues.

23. In accordance with the Convention, environmental protection associations legally have the right to participate as members of the public during the decision-making process with relation to plans and programmes.

Article 3, paragraph 7

24. An in-depth analysis will be carried out in the beginning of 2008 by external contracting parties on the implementation of the guidelines by Belgium as well as on the formulation of recommendations, if necessary.

Article 3, paragraph 8

25. The Constitution governs the fundamental freedoms of individuals. Of particular note are articles 11 (non-discrimination), 12 (individual freedom), 19 (freedom of expression) and 23 (right to lead a life in keeping with human dignity). Other rights include the right to the preservation of a healthy environment (art. 23, para. 4) and the right of association (art. 27).

Walloon Region

Article 3, paragraph 2

26. The Civil Service Code (Book I, Title 1, Art. 2) stipulates that the Ministry of the Walloon Region's officials are required to observe the laws and regulations that are in effect as well as the Charter of Good Administrative Behaviour.

27. One of the main tools of this policy is the website, which provides the public with a full range of information related to the environment in the Walloon Region.

Article 3, paragraph 3

28. The Environment Code (Book I, Part III, Title II) made it possible to set up a string of Regional Environmental Initiation Centres (CRIEs) for the purpose of promoting general knowledge of the environment in the public at large.

29. The DGRNE (Direction générale des Ressources naturelles et de l'environnement) and the minister in charge of environmental affairs often conduct various environmental awareness-raising campaigns. In addition, they provide financial, technical and/or logistic support (e.g., housing websites) to various activities carried out by NGOs or the public authorities to raise environmental awareness.

Article 3, paragraph 4

30. Several advisory boards have been set up by decree in order to give the public authorities their opinions prior to the adoption of legislation and regulations in such areas as sustainable

development (CWEDD), water policy (Water Commission), and so on. If the public authority does not heed these opinions, it must give in some cases the reasons for this. These commissions are composed of representatives of the region's business federations, trade unions, associations, and NGOs.

31. Several framework agreements link the DGRNE to various bodies representing civil society.

32. The minister in charge of environmental affairs and DGRNE subsidize a series of NGOs each year via the budget act.

Article 3, paragraph 7

33. As a rule, the Foreign Ministry heads the Belgian delegation.

34. In matters that come under the region's jurisdiction, the Walloon Region strives to ensure that NGOs are informed and participate through prior coordinating activities.

Article 3, paragraph 8

35. Labour laws and the principles of the Constitution (freedom of expression) are federal powers. See the Federal Government's report (<http://www.belgium.be>).

Brussels Capital Region

Article 3, paragraph 2

36. The following measures apply:

- (a) **The Info-environment service** (general): by telephone or e-mail.
- (b) **Reception of the public for consultation of certain documents** (permits, incident studies, etc.): directly in certain departments.
- (c) **Training in communications for civil servants who deal with the public**, i.e. park wardens, provides information to the public concerning the parks or the environment in general.
- (d) **Consultation of the public via representative organizations on the Brussels Environment Council**, that issues opinions on draft legislation as well as on draft plans and programmes adopted by the Brussels Government.

37. **Information on the right of appeal** such information against the decision accompanies all administrative decisions (article 10, Ordinance of 18 March 2004 on access to environmental information).

Article 3, paragraph 3

38. The following measures apply:

- (a) **General awareness tools: a free quarterly newspaper** (via subscription or Web site), **a very complete website** (information for the public or businesses), many **publications** for the public at large or on scientific topics (often free-of-charge), the annual organization of the

Environment Festival (an event open to the public, with many environmental professionals in attendance. More than 100 information stands and more than 20,000 visitors in 2007).

(b) **Educational programmes in schools: the “Medere” project (education and awareness in schools** of environmental protection) is coordinated by IBGE-BIM (Institut bruxellois pour la gestion de l’environnement de la région de Bruxelles-Capitale) and carried out on the ground by two associations, the Réseau IDée(Information et Diffusion en éducation à l’environnement) and "NME-link Brussel". Their task is to develop and promote an information structure for environmental education for the fundamental and primary Brussels educational network. Tools, such as **educational folders, exercise books...**, have also been developed.

(c) **Awareness tools for companies: a free quarterly newspaper** providing information is sent out more than 7,000 subscribers and is available on the website. A newsletter is sent out more than 2,750 subscribers. **Brochures** are sent out and many **websites** are available for informing companies about their obligations and to give advice concerning eco-management. IBGE-BIM also awards the **“Eco-dynamic company” label** to businesses that get involved in a voluntary environmental management plan.

(d) The organization of different **seminars, workshops and training sessions**, either for the public or a group of specialists or companies.

Article 3, paragraph 4

39. The following measures apply:

(a) **The Environment Council of the Brussels Capital Region (ECBCR)**, on the initiative of the regional government or the Brussels environment minister, has the task of issuing a reasoned opinion on any regional topic dealing with the environment (Decree of 15 March 1990).

(b) **Subsidies are granted to association active in environmental matters** for information missions relating to energy, social economy and in order to organize activities focusing on nature education.

Article 3, paragraph 7

40. No particular measures were taken by the region.

Article 3, paragraph 8

41. The constitutional guarantees are being observed.

Flemish Region

Article 3, paragraph 2

42. The principle of customer-friendly service and assistance is incorporated in the code of professional conduct.

Article 3, paragraph 3

43. Every public authority has to inform the public about the rights on access to information. Within the Environmental Administration, a specific unit continues working on citizen's responsibility regarding nature and environmental issues.

Article 3, paragraph 4

44. The recognition and subsidisation of environmental associations is regulated by law.

Article 3, paragraph 8

45. The Belgian Constitution governs and guarantees the fundamental freedoms of individuals (i.e. no discrimination, individual freedom, freedom to express one's opinion on any subject, right to lead a life in keeping with human dignity, right of association and right to consult any administrative document and to receive a copy of it).

**IV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION
OF ARTICLE 3**

46. No information was provided under this header.

**V. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE
GENERAL PROVISIONS OF ARTICLE 3**

Federal authority

47. The www.aarhus.be portal was launched nationally on 18 September 2006. It offers general information relating to the Convention and its implementation in the European Union (EU) and Belgium. In March 2007, this website was voted "Best National Node (2007) of the Aarhus Clearinghouse Mechanism".

Brussels Capital-Region

48. There is a pre-existing legal framework with respect to:

- (a) Ordinances on access to information, disclosure of administrative acts, regular publication of the state of the environment, etc;
- (b) The IBGE-BIM website;
- (c) The organization of public surveys on draft environmental plans and impact studies;
- (d) Consultation on the granting of certain environment permits issued jointly with building permits.

Flemish Region

49. See the following websites: www.aarhus.be, www.lne.be/themas/regelgeving/aarhus.

VI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 3

50. See the following websites: www.health.fgov.be, <http://www.aarhus.be>, www.belgium.be.

VII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO ENVIRONMENTAL INFORMATION IN ARTICLE 4

Federal authority

Article 4, paragraph 1

51. The new law of 5/8/2006 aims to transpose the provisions of the Convention as regards access to information. It does not lay down any conditions linked to nationality, domicile or registered office.

52. The *rationae personae* scope is very broad: It now covers not only all the federal public services but also private persons who exercise (a) public duties or (b) provide public services related to the environment.

53. The *rationae materiae* scope covers all information in an environmental authority's possession, regardless of the medium or the material form, concerning the environment, defined in a very broad sense.

54. The principle of access to information is contained in article 18, § 1.

55. The right to consult an environmental information by an environmental authority is guaranteed.

Article 4, paragraph 1 (a)

56. The law does not require the statement of an interest in the request.

Article 4, paragraph 1 (b)

57. If the environmental information is available or can be reasonable made available on the medium, in a given electronic form or format, the law provides for the distribution of the copy according to the request.

Article 4, paragraph 2

58. The time limit laid down by the law is 30 calendar days, which can be extended to a maximum of 45 calendar days.

Article 4, paragraphs 3 and 4

59. The law also provides for three possibilities for refusing to disclose information, as laid down in article 4, paragraph 3 of the Convention. The law provides that the public authorities shall take into account the public interest served by the disclosure.

Article 4, paragraph 5

60. The law provides for an obligation to automatically transfer the request as quickly as possible to the authority that possesses or is presumed to possess the information. The person who has made the request must be informed immediately.

Article 4, paragraph 6

61. The law provides that environmental information is made public in part if it contains information other than that which is the subject of an exception and if it is possible to separate the aforementioned information from the other information.

Article 4, paragraph 7

62. According to the law, the environmental authority must notify the person making the request of its decision as well as the reasons for rejecting the request within 30 days at the latest (45 days in the case of an extension). The reason must, in any case, be concomitant with the decision to reject the request.

63. Furthermore, in accordance with Article 8 of the law of 5/8/2006, information on the right to appeal must accompany all federal notification.

Article 4, paragraph 8

64. The Royal Decree of 17/08/2007 determines the payment system for the copy of an administrative document or the copy of a piece of environmental information. It states that a fee may be requested as from the 51st copy. The payment is fixed at EUR 0.05 and reduced to EUR 0.02 as from the page 101. A payment at cost price is applied when a medium other than paper is used. The payment is payable to the public service in cash, on site, if the copy is given directly to the person making the request. However, the payment is made beforehand if the copy has to be sent by post.

Walloon Region

65. Access to environmental information in the Walloon Region is governed by decree since 1991 and has been recently reinforced by the decree of 16 March 2006 amending the Environment Code. This decree fully transposes European Directive 2003/4 of 23 January 2003 on public access to environmental information into regional law.

66. The terms “public authority” and “environmental information” are defined therein in compliance with the Convention.

Article 4, paragraph 1

67. Access to information shall be given, as the applicant prefers but subject to the conditions set in Article 4.1.b of the Convention, via on-site consultation, free of charge, or either the delivery of copies or by email, the actual cost of which being borne by the applicant. Information held by public authorities must be easily accessible by telecommunications networks or other electronic means.

Article 4, paragraph 2

68. The information shall be made available to the applicant as soon as possible and within one month from the date on which the request was received or no later than two months if importance or complexity of such information requires to do so. In any case, the applicant will be informed within one month if the time limit must be extended or if the request needs further clarification from the applicant.

Article 4, paragraph 3, 4 and 5

69. Request may be refused under conditions set in Article 4.3 of the Convention. Grounds for refusal are interpreted in a restrictive way, taking into account the public interest served by disclosure. A public authority that is not in possession of the information, point the requester towards the appropriate public authority that hold the information and transfer the request to it. Public authority sees to establish registers indicating where environmental information accessible to the public is available. Access to those registers is free of charge.

Article 4, paragraph 6

70. Request may be refused under conditions set in Article 4.4 of the Convention except for information related to emissions for which items a, d, f, g and h are not valid. Grounds for refusal are interpreted in a restrictive way, taking into account the public interest served by disclosure. When it is possible to separate information covered by the scope of the derogations from the rest of the information that is requested, the public authority makes part of the information that has been requested available to the applicant. All refusals to communicate part of the requested information are duly explained and made in writing.

Article 4, paragraph 7

71. A written answer spelling out the reasons for refusing a request for information must be accompanied by the possible courses of action that are open to the applicant. Since 1991, an Appeals Commission has been appointed by the Walloon Government. This commission is tasked with handling complaints concerning access to information held by Wallonia's public authorities and if necessary revising the positions taken by these authorities. This Appeals Commission is an administrative procedural review board. Its decisions override those of the authority originally empowered to take the decision.

Article 4, paragraph 8

72. Free on-site or online consultation. For the delivery of copies, the actual cost can be borne by the applicant.

Brussels Capital-Region

73. Ordinance of 18 March 2004 on access to environmental information. (Published in the Moniteur Belge of 30 March 2004).

74. Regarding **definitions in article 2**: see Ordinance, article 3. Regarding **Article 3, paragraph 9**: Ordinance, article 4: no discrimination. Regarding **Article 4, paragraph 1**: see Ordinance, article 4. Regarding **Article 4, paragraph 2**: see Ordinance, article 8. Regarding **Article 4, paragraph 3 and 4**: see Ordinance, article 11, paragraphs 1 to 3. Regarding **Article 4, paragraph 5**: see Ordinance, article 12. Regarding **Article 4, paragraph 6**: see Ordinance, article 11, paragraph 5. Regarding **Article 4, paragraph 7**: see Ordinance, article 13. Regarding **Article 4, paragraph 8**: see Ordinance, article 5.

Flemish Region

75. Non-discrimination principle: Article 11 Constitution. Decree concerning open government (DOB) (http://www.emis.vito.be/wet_ENG_navigator/index.htm).

Article 4, paragraph 1

76. The applicant is under no obligation to prove an interest. He can ask for perusal, explanation or a copy. The document must be provided in the form requested if available or reasonably available.

Article 4, paragraph 2

77. Time limits: reply: fifteen days; implementation: thirty days. A fifteen days extension is possible. The applicant can propose a shorter term; when this period is exceeded, it must be justified.

Article 4, paragraph 3 and 4

78. In comparison with the Convention, the grounds for refusal are more restricted (Arts. 10, 11 and 15). Balance of interests: Article 10 and 15, paragraph 1.

Article 4, paragraph 5

79. The application has to be forwarded as soon as possible to the competent authority; the applicant will be informed immediately (Art. 17, para. 3).

Article 4, paragraph 7

80. Time limits: see (Art. 4, para. 2). Each application rejection must explicitly be stated (Law 29 July 1991).

Article 4, paragraph 8

81. The right to perusal of and explanation on administrative documents is free of charge. An amount may be charged for copies, on the basis of a reasonable cost price (Art. 20, para. 3).

**VIII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF
ARTICLE 4**

Federal authority

82. Within the framework of the practical application of the provisions relating to access to information (also see the following question), it appears that it is not always easy to determine whether a question must be considered or not as a request for environmental information in the sense of the Convention (and if the procedure described must or not be applied).

**IX. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE
PROVISIONS OF ARTICLE 4**

Federal authority

83. The Environment Information Desk is accessible by post, fax, telephone, e-mail or using a form which has been created on the www.health.gov.be/infoaarhus website. It was officially launched in September 2006 via a press release and a leaflet describing the procedure to follow to obtain the environmental information in the possession of the federal authority (“Do you have a question about the environment? Ask, and we’ll reply!”).

84. All the requests received and the answers given are recorded in an electronic database. Statistics concerning the quantity and type of requests are collected on a monthly basis. On average, the information desk receives around fifty requests a month (without taking orders for publications into account), mainly from citizens. Approximately one third of the requests concern matters that fall under the scope of other environmental authorities (the majority concern the Regions). The themes that are most often the subject of a request are “clean cars” (concerning the financial benefit when purchasing a car that emits less carbon dioxide (CO₂), liquid petroleum gas (LPG) and biofuel), “asbestos” and “mobile phones and radiowaves”. The average time to obtain an answer is currently 10 days.

Brussels Capital-Region:

85. Statistics from the Info-Environment Department: 14,487 calls and 11,543 e-mails were received in 2006. The website is also a widely used source of information; the number of visitors increases constantly. A new website will be online within the end of the year (October).

X. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 4

Federal authority

86. www.health.fgov.be/infoaarhus: Environment Information Desk page, including an electronic form and explanations on the procedure, in accordance with the law of 5 August 2006.

Flemish Region

87. www.vlaanderen.be/openbaarheid, www.lne.be/themas/regelgeving/aarhus.

XI. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON THE COLLECTION AND DISSEMINATION OF ENVIRONMENTAL INFORMATION IN ARTICLE 5

Federal authority

Article 5, paragraph 1

Article 5, paragraph 1(a)

88. The law stipulates that the environmental authority is required to take the necessary measures to organise the environmental information it possesses, in relation with its duties.

Article 5, paragraph 1(b)

89. On a federal level, the information relating to the environment is centralized in the Federal Plan for Sustainable Development, on the one hand, and a federal report especially dedicated to the environment will be published in 2010, on the other hand.

90. Besides these public reports, environmental data is collected and processed further within the framework of compulsory and voluntary reports aimed at international authorities.

Article 5, paragraph 1(c)

91. In emergencies, appropriate information is disseminated immediately and without delay.

92. Crisis management procedures are defined. A particular procedure is elaborated for the North Sea.

Article 5, paragraph 2

93. The law stipulates that the environmental authority is required to take the necessary measures to organise the environmental information it possesses, in relation with its duties with a

view to making it actively and systematically available to the public, especially by using electronic means of communications.

Article 5, paragraph 3

94. The law stipulates that the environmental authorities are required to make sure that a series of environmental information, such as the texts of international treaties, federal legislation, federal plans and programmes, are made available electronically.

Article 5, paragraph 4

95. For the first time, the new federal law of 5/8/2006 provides for the establishment of a federal report on the status of the federal environmental policy as well as the status of the marine environment in marine areas under the jurisdiction of Belgium. This report will complete the three regional reports that already exist on the status of the environment. The first report on the federal status of the environment will be published in 2010, given to Parliament by the Minister of the Environment and will be disseminated to the general public.

Article 5, paragraph 5

96. The law explicitly stipulates that a series of environmental information must be made available in electronic form, in accordance with Directive 2003/4/CE.

Article 5, paragraph 6

97. The question relating to the manner, in which the authorities encourage farmers to inform the public about their activities that have a significant impact on the environment, essentially falls under the remit of the regional policy. As regards the information policy on products, see the answer in question 8.

Article 5, paragraph 7

98. Via the communication policy, the information campaign on public rights as regards the environment (www.aarhus.be and the leaflet on the information desk), the law of 2006 and the publication of annual reports.

Article 5, paragraph 8

99. In connection with the policy on product standards, several mechanisms currently exist at the Belgian federal level which are aimed at improving public information, e.g. Economic instruments, legal instruments and communication tools.

Article 5, paragraph 9

100. This matter is not federal but regional in its remit.

Walloon Region

Article 5, paragraph 1

101. The Environment Code (Book I, Part V) stipulates that an assessment of the environmental plans and programmes subject to public inquiries be done in the course of developing a plan or programme and before it is adopted or submitted for legislative approval, depending on the case.

102. The decree of 21 April 1994 on environmental planning within the framework of sustainable development and which has been integrated into the environment code (Book I, Part IV), provides for the drafting of an annual report on the state of the Walloon environment, called the Environmental Scoreboard, to be put online on the DGRNE website. This reference puts special emphasis on the constant assessment of the policies that are being implemented as well as public information, awareness raising, and participation.

103. When it comes to environmental monitoring, the Walloon Region has also set up various monitoring networks. The public authority is responsible for keeping the data up to date.

104. The decree of 11 March 1999 on environmental permits and its implementing orders regulate the procedure for issuing operating permits for activities that are likely to have an environmental impact. This decree organizes the conduct of an impact study prior to the filing of a permit application for activities likely to have significant environmental impacts. The permits that are granted must include environmental impact surveillance obligations.

105. For emergencies, the Walloon Region has set up an environmental incident watch and intervention service within the Environmental Police Division called "SOS Pollutions" that is accessible to everyone around the clock.

106. Environment code stipulates also that the following information must be made available to the public a.o. by electronic means and where relevant:

- (a) International treaties, conventions and agreements as well as national, regional and local legislation and policies, plans and programmes related to environment;
- (b) Implementation reports on those items archived by authorities on electronic form;
- (c) Environmental scoreboards;
- (d) Datas (or a summary) collected within the framework of activities having an impact on environment;
- (e) Permits for activities having an impact on environment and impact assessment studies concerning the state of the environment or an indication where the information can be accessible.

Article 5, paragraph 2

107. Creation of the DGRNE website www.mrw.wallonie.be/dgrne or www.environnement.wallonie.be. Decree of 16/03/06 amending the Environment Code on public access to environmental information (see also the answer concerning Art. 4).

Article 5, paragraph 3, 4, 5 and 7

108. Creation of the DGRNE website: www.environnement.wallonie.be.

Article 5, paragraph 6

109. Roll-out of annual environmental reporting to the public authority via the Walloon Government's draft.

110. The decrees of 11 September 1985 organizing environmental impact assessment, as integrated in the Environment Code, and of 11 March 1999 concerning the environment permit, both cover the procedure for granting permits to establishments engaged in activities that have environmental impacts. A prior impact study is required for a series of activities that can potentially have significant environmental impacts. Information meetings are to be held at the start of the impact study process and a public inquiry is required as part of the environmental permit investigation process.

Article 5, paragraph 7

111. See under article 5, paragraph 1, for the plans and programmes and for the annual report on the state of the Walloon environment.

Article 5, paragraph 8

112. An agreement has been signed with a non-profit association of consumer defence and environmental protection associations to set up an "ecological consumption network" to raise consumer awareness and inform and help consumers to make more environmentally friendly and healthier consumption choices.

Article 5, paragraph 9

113. Implementation of the European Pollutant Emission Register (EPER) Decision (instituting an emissions inventory system for the installations covered by Directive 96/61/EC concerning Integrated Pollution Prevention and Control (IPPC), the Regulation 166/2006 implementing Pollutant Release and Transfer Registers (PRTRs) in the EU and the protocol on PRTRs. In Belgium this is done by the Regions and the information is made available through the E-PRTR website of the European Environment Agency (EEA), the websites of each regional authority and the national node Aarhus.be. The Walloon Parliament has ratified the Protocol on PRTRs on 30/05/07 and transposition through the decree of 11 March 1999 concerning the environment permit.

114. Implementation and streamlining of reporting for the industry through an integrated form called Referential Environment: Integrated Management of Enterprises (REGINE):
<http://bilan.environnement.wallonie.be>.

Brussels Capital-Region

115. See Ordinance of 18 March 2004 on access to environmental information (published in the *Moniteur Belge* of 20 March 2004).

Article 5, paragraph 1

116. The following measures apply:

- (a) See Ordinance, article 16, paragraph 1. The environmental observatory has the task of collecting, analysing and disseminating all information that may be useful in understanding the state of the environment and promoting good management by the responsible authorities;
- (b) See Ordinance, article 16, paragraph 2;
- (c) See Ordinance, article 18;
 - (i) Alerts sent out to the public via the mass media if certain air pollution thresholds are exceeded;
 - (ii) A “pollumeter” (air quality indicator in Brussels) is available 24/7 on www.ibgebim.be and via a telephone answering machine;
 - (iii) The population is informed of events that may generate pollution, e.g. risks of a fire at a former industrial site, via the IBGE-BIM Web site and press releases.

117. Regarding **Article 5, paragraph 2**, see Ordinance, article 10. Regarding **Article 5, paragraph 3**, see Ordinance, article 16, paragraph 1 al.1 and 3 and Ordinance, article 16, paragraph 2. Practically speaking, this means:

- (a) Publication on www.ibgebim.be of plans and programmes (also published in printed form), reports on the results of public surveys and progress reports on plans and programmes, data on the state of the environment (regularly updated) and many reports on studies;
- (b) Legal texts on www.moniteur.be and www.ibgebim.be provide lists of environmental legislation.

118. Regarding **Article 5, paragraph 4**, see Ordinance, article 17. Regarding **Article 5, paragraph 5**, see Ordinance, article 16, paragraph 2. Regarding **Article 5, paragraph 6**, see Ordinance, article 16, paragraph 2. Regarding **Article 5, paragraph 7**, see Ordinance, articles 10 and 16.

Article 5, paragraph 8

119. The following measures apply:

- (a) See Law of 21 December 1998 (published in *Moniteur Belge* of 11 February 1999) on product standards designed to promote sustainable production means, environmental protection and public health;
- (b) Practically speaking, this means: awareness of the public of the need to behave in such a way and buy products that damage to the environment is kept to a minimum (see above).

Article 5, paragraph 9

120. See Ordinance, article 16, paragraph 2 (e).

Flemish Region

Article 5, paragraph 1

Article 5, paragraph 1 (a)

121. The Flemish Decree stipulates that the environmental information must be categorized, accurate, comparable and up to date.

Article 5, paragraph 1 (b)

122. The “environmental management information system” aims at a step-by-step development of a general and integrated environmental information system in which all available and relevant environmental data of all public environmental authorities can be consulted on the Internet. Environmental information from companies is retrieved by the Integrated Annual Environmental Report.

Article 5, paragraph 1 (c)

123. Several authorities are involved, with regulations on:

- (a) Exchange of information about projects with cross-regional environmental effects;
- (b) Controlling the hazards of major accidents which involve dangerous substances;
- (c) Civil protection;
- (d) Reporting and warning obligation in accidental emissions and breakdowns.

124. Up-to-date information about flooding danger and air quality is available on the Internet.

Article 5, paragraph 2

125. The following measures apply:

- (a) The Flemish Government must compile a joint file, containing familiarisation information and primary information, which is free of access;
- (b) Officials must support anyone in seeking access to information;
- (c) The right to peruse environmental information in lists, registers or files is free of charge.

Article 5, paragraph 3

126. A lot of environmental information is available via electronic web databases, as required by the Decree of 28 October 2005.

Article 5, paragraph 4

127. Decree of 5 April 1995 on the general provisions regarding environmental policy: drawing up a two-yearly environmental report, with a description of:

- (a) The state of the environment
- (b) The environmental policy
- (c) The expected environmental development.

The report is published in book form and widely announced.

128. Decree on nature conservation: drawing up of a two-yearly nature report, available on the website (<http://www.nara.be>) and in book form.

129. Indicators on the state of the environment and nature can be found at:
<http://indicatoren.milieuinfo.be> and <http://www.vlaanderen.be/aps>

Article 5, paragraph 5

130. New legislation: publication in the Belgian Official Gazette (B.S.). Flemish co-ordinated environmental legislation: available through the Flemish Environmental Legislation Navigator. Policy documents: www.vlaanderen.be.

131. Every authority is under the obligation to inform the population in a systematic, correct, balanced, timely and understandable manner on its policies, regulations and service (art. 28, § 1 DOB).

132. The regional environmental policy plan is announced in the B.S. and is available for perusal at the provinces and municipalities (art. 2.1.10 DABM).

Article 5, paragraph 6

133. European Regulation 761/2001 on Eco-Management and Audit Scheme (EMAS): companies must supply information on the environmental impact of their activities.

134. For certain categories of plants, an environmental audit and integrated annual environmental report is obliged according to the “Internal Corporate environmental care”.

Article 5, paragraph 7

135. Information on access to environmental information, public participation and access to justice is published in the annual reports of the environmental authorities and the Flemish Ombudsman. Information relating to public services: see the preliminary Acts of the environmental authorities and their web sites. Registration and monitoring environmental complaints: see environmental complaints database.

Article 5, paragraph 9

136. The integrated environmental report of the companies contains information on emissions, waste, water pollution and groundwater extraction and forms the basis for a PRTR. On 6 July 2007, the Flemish Region ratified the Protocol on PRTRs.

XII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 5.

Federal authority

137. The main obstacles encountered are inherent in the very nature of administrations. The implementation of the concrete measures in the Aarhus Convention regarding access to environmental information demands significant funding, which must be mobilised every year.

138. It is also difficult to check what citizens think of the DG Environment (Directorate General responsible for environment, nuclear safety and civil protection) communication strategy.

XIII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 5

139. DG Environment has figures relating to the number of webpages and the number of news items published on the portal site. These figures are used internally to develop the communication strategy.

XIV. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 5

140. See a selection of websites at federal level : www.aarhus.be, www.inspire.be, www.ecolabel.be, www.underECOconstruction.be, <http://www.health.fgov.be/biocids> Biocides authorized for marketing in Belgium (DG Environment) <http://www.fytoweb.fgov.be> Phytosanitary products authorised for marketing in Belgium (Food Safety DG) www.nehap.be, (on Environment and Health), www.energivores.be, www.energievreters.be, www.voitureeconomie.be, www.zuinigewagen.be, A guide to cars marketed in Belgium, which are classed according to their fuel consumption and CO2 emissions (DG Environment) www.mobilit.fgov.be, (FPS Mobility and Transport) www.mineco.fgov.be, (FPS Economy, SME, Self-employed and Energy) www.belspo.be, (Federal Science Policy), www.poddo.be, (FPS Sustainable Development Programming) <http://www.nirond.be>: web site of the Belgian Agency for Radioactive Waste and Enriched Fissile Materials.

**XV. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING
THE PROVISIONS ON PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC
ACTIVITIES IN ARTICLE 6.**

Federal authority

Article 6, paragraph 1

141. The following measures apply:

(a) The authorization of specific activities, including procedures for environmental impact assessment (EIA), falls primarily within the remit of the Regions. Nevertheless, the Federal Authority remains responsible for authorizing the operation of nuclear activities (Royal Decree of 20 July 2001) and activities in marine areas that come under Belgian jurisdiction (the North Sea) (see article 28 of the Law of 20 January 1999, the Royal Decree of 7 September 2003 and the Royal Decree of 9 September 2003);

(b) With regard to offshore bunkering, see the Ministerial Decree of 18 April 2001.

Article 6, paragraphs 2 to 4, 6 and 7

142. With regard to the nuclear energy sector, see article 6, paragraph 4, of the Royal Decree of 20 July 2001, and for the marine environment, see article 18, paragraph 1, of the Royal Decree of 07 September 2003.

Article 6, paragraph 10

143. The procedure described above applies to permits and authorizations relating to the marine environment.

Article 6, paragraph 11

144. Belgium has transposed Directive 2001/18/EC on the deliberate release of genetically modified organisms through the Royal Decree of 21 February 2005. Furthermore, Regulation 1829/2003/EC of 22 September 2003 concerning genetically modified food and feed is directly applicable to Belgium and also contains provisions regarding information and public consultation before authorising the marketing of genetically modified food and feed. The conformity of these provisions with the amendment to the Convention on genetically modified organisms will allow Belgium to take care of the ratification. This ratification procedure was launched at federal level in the second half of 2007.

Walloon Region

Article 6, paragraph 1

145. The Environment Code, and the decree of 11 March 1999 on the environment permit cover the procedure of granting permits to establishments that are engaged in activities that have environmental impacts. In accordance with these decrees, prior impact assessments are required

for a series of activities that are liable to have significant environmental impacts. The other activities must append an environmental impact assessment sheet (notice) to their permit applications.

146. These decrees regulate the public information and participation procedures in these areas, including the matter of deadlines.

147. The public is defined in these decrees as follows: one or more natural or legal persons, as well as their associations, organizations and groups.

148. The Environment Code (Book I, Part V) also provides for public participation when it comes to the environmental plans and programmes that are developed by the public authority. A new decree of 31 May 2007 concerning public participation fully transposes the Directive 2003/35, in compliance with the Convention. This decree reorganises public participation for elaboration of certain plans and programmes relating to environment by harmonising and making uniform rules and procedures applying to public enquiries. This ensures simplifications and results in better regulation, simplification and transparency.

Article 6, paragraph 2

149. When an impact assessment is required information meetings at the start of the process of conducting the impact assessment and a public inquiry as part of the environmental permit investigation.

Article 6, paragraph 3

150. There is a 15-day deadline for submitting remarks after the information meeting that is part of the impact assessment. There is a 30-day deadline for submitting remarks after the request for a public inquiry has been submitted under the environmental permit procedure.

Article 6, paragraph 4

151. See article 6, paragraphs 2 and 3.

Article 6, paragraph 5

152. When carrying out an impact assessment, the applicant must publish an announcement specifying the nature of the project at least 15 days before the information meeting.

Article 6, paragraph 6

153. Under the public inquiry the local administration that is in charge of issuing the permit must inform the residents and post an announcement that spells out the project consultation procedures.

Article 6, paragraph 7

154. See article 6, paragraph 3.

Article 6, paragraph 8

155. The decree of 11 March 1999 concerning the environmental permit includes an obligation to take decisions on the basis of the opinions and comments that have been received and the possibility of appealing the decision.

Article 6, paragraph 9

156. The decree of 11 March 1999 concerning the environmental permit specifies the measures to take to publicize the decisions that are taken by the authority responsible for granting the permits.

Article 6, paragraph 10

157. The same procedures apply as for granting a new permit.

Article 6, paragraph 11

158. See the Federal Government's report: www.health.fgov.be

Brussels Capital Region:

Article 6, paragraph 1

159. The following measures apply:

(a) Arrêté du Gouvernement de la Région de Bruxelles-Capitale (AGRBC) of 9 April 2004 adopting the Brussels land use code, title IV, chapter III, section III, article 149 to 152 (published in *Moniteur Belge*, 26 May 2004).

(b) Ord. of 22 April 1999 setting the list of installations classed as 1A (published in the *Moniteur Belge*, 5 August 1999).

(c) AGRBC of 4 March 1999 setting the list of installations classed as 1B, 2 and 3 (published in the *Moniteur Belge* of 7 August 1999).

Article 6, paragraphs 2, 3, 4, 5, 7, 8, 9, and 10

160. AGRBC of 9 April 2004 adopting the Brussels land-use code, title IV, chapter III, section III, article 149 to 152 (published in *Moniteur Belge*, 26 May 2004).

Article 6, paragraphs 2, 3, 4, and 9

161. Ord. of 18 March 2004 on evaluating the impact of certain plans and programmes (published in *Moniteur Belge*, 30 March 2004)

Article 6, paragraph 11

162. See the report from the federal authorities.

Flemish Region

Article 6, paragraph 1

163. An environmental licence is required to operate or change nuisance-causing plants listed in Vlare I, which contains more activities than annex I of the Convention.

164. A town planning licence is required for various activities (construction, deforestation, cutting down trees, relief modifications).

Article 6, paragraphs 2 and 7

165. The information requirement within the participation procedure is regulated in the “public inquiry” procedures. The application is available for perusal and is announced by posters. For some plants, all inhabitants living within a radius of hundred metres are informed and the public inquiry is announced in the press. When an environmental impact report or a safety report is required, an information meeting is organised. Content of the publication: subject of the application, short description of the plant, the municipal authority services, the possibility to submit objections and remarks and place and time of the information meeting. A similar public inquiry will be organised on certain applications for a town planning licence.

Article 6, paragraph 3

166. The public inquiry runs up to 30 days. During this period the information is available for perusal and objections can be formulated.

Article 6, paragraph 4

167. After the declaration of completion and admissibility of the environmental application, the public inquiry starts within 10 days.

Article 6, paragraph 5

168. Currently, the Flemish environmental legislation does not contain an overall regulation regarding the contact between potential applicants and the public concerned. The notification phase of the environmental impact reporting process gives the initiator the chance to clarify the project objectives at an early stage.

Article 6, paragraph 6

169. When an environmental impact report is required, it contains: a detailed description of the project, the main characteristics of the production processes, the probably significant environmental effects for man and environment and in another country, the intended measures to

avoid, restrict and possibly remedy major environmental effects, a prognosis of the expected emissions and residues, a draft of the main alternatives, a description of the knowledge gaps, a report regarding employment, investments, the goods to be produced and a non-technical summary.

170. Other legislation requires another description of the existing state of the air, the water, the noise level, the flora and fauna in the areas that may be affected by the plant, reports, advices and all other relevant information.

Article 6, paragraph 8

171. There is a general obligation to state reasons (Act of 29.07.81). Apart from this Act, specific obligations to state reasons exist.

Article 6, paragraph 9

172. Within 10 days, the decision on environmental licence and the service where the decision can be perused, are made known through posting. The applicant of an urban development licence must post the decision immediately.

Article 6, paragraph 10

173. Reasons for a modification or addition to the environmental licensing conditions, must be justified (Art. 21 Decree on Environmental licences, Art. 45 Vlarem I).

XVI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 6

174. No information was provided under this heading.

XVII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 6

175. No information was provided under this heading.

XVIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6

Federal authority

176. <http://www.mumm.ac.be>, <http://fanc.fgov.be>.

XIX. PRACTICAL AND/OR OTHER PROVISIONS MADE FOR THE PUBLIC TO PARTICIPATE DURING THE PREPARATION OF PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT PURSUANT TO ARTICLE 7

Federal authority

177. Article 7 of the Convention was transposed via the law of 13 February 2006 relating to the assessment of the effects of certain plans and programmes on the environment and public participation in the elaboration of the plans and programmes relating to the environment. This law includes a unique chapter on public participation, which is valid both for consultations that must take place within the framework of the Convention and those planned within the framework of the strategic assessment of the effects on the environment of the federal plans and programmes (Directive 2001/42/CE). Therefore, this law harmonises the public participation procedures for plans and programmes at federal level.

Walloon Region

178. The Environment Code (Book I, Part V) provides for public participation when it comes to plans and programmes that are developed by the public authority and affect the environment.

179. The definition of “public” in this code is the one given in the Convention.

180. Several advisory bodies have been created by decree in order to give the public authorities their opinions prior to the adoption of legislation and regulations in such areas as sustainable development (CWEDD), water policy (Water Commission), and so on. The public authority must in some cases give its reasons for failing to follow the opinions that such bodies give. These advisory bodies are composed of representatives of business federations, trade unions, associations, and NGOs.

181. The Environment Code (Book I, Part V) provides for public participation when it comes to plans and programmes that are developed by the public authority and affect the environment.

182. If a plan is likely to have significant impacts on the environment, its author must append thereto an impact report. A public inquiry is organized and the author is required to issue an environmental statement summing up how the environmental considerations and opinions submitted were integrated into the plan.

183. See also answer under Article 6, paragraph 1

Brussels Capital Region

184. The following measures apply:

(a) See Ord. of 18 March 2004 on evaluating the impact of certain plans and programmes (published in Moniteur Belge of 30 March 2004), article 11 and 13.

(b) See Ord. of 7 March 1991 on the prevention and management of waste (art 5) and Ord. of 17 July 1997 on noise abatement in urban settings (art 5 §§ 2 to 8), which provides

explicitly for the obligation to organize a public survey on draft waste plans and noise abatement plans.

185. Public surveys were organized during the drafting of the waste and noise abatement plans. In addition, public surveys were held when the air and climate plan, the management plan for the Soignes Forest and the plan for assigning CO₂ emission quotas to Brussels were being drawn up. These surveys and consultations were a big success. More than 7,000 responses from the public survey were received concerning the second waste plan, more than 5,000 responses were received concerning the third waste plan and more than 8,000 from the draft noise abatement plan. (Nota bene: the Brussels Capital Region has around 1 million inhabitants.)

Flemish Region

186. In accordance with DABM, an Environmental Policy Plan is laid down every five years, linked with an Annual Environmental Programme, which is submitted for advice to SERV (Flanders' Socio-Economic Council) and the Mina Council (Environment and Nature Council of Flanders). In addition, there are more detailed plans at sectoral, compartmental or thematic level containing detailed provisions on participation.

187. The draft environmental policy plan is made available for perusal in the municipalities for 60 days. During this period everyone can submit remarks. One information and participation meeting is organized per province. This procedure is announced in the press, on the radio and television (art. 2.1.9 DABM). A consideration document explains how the remarks were taken into account. The plan is published both on paper and electronically and is announced by extract in the B.S. The regional spatial structure plans are subjected to a public inquiry (Arts. 20 and 42 Decree on Spatial Planning), with announcement through posting, B.S., newspapers and radio and television; provision of information; opportunities to formulate remarks and objections. The regional spatial structure plans are subjected in each province to one information and participation meeting (Art. 20, Decree on Spatial Planning).

188. For the determination of the provincial and municipal environmental planning and spatial policy, there are the same participation opportunities.

XX. OPPORTUNITIES FOR PUBLIC PARTICIPATION IN THE PREPARATION OF POLICIES RELATING TO THE ENVIRONMENT PURSUANT TO ARTICLE 7

Federal authority

189. The term policy is covered, at the federal level, in the concept of plans and programmes (see above).

XXI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 7

Federal authority

190. Given the distribution of competences in particular, the plans and programmes are most often elaborated at federal level from a “meta-strategic” point of view, and therefore with contents whose immediate impact on the daily lives of citizens is difficult to assess and express.

XXII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 7

Brussels Capital Region

191. The ordinance of 18 March 2004 has not yet been applied.

XXIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 7

Federal authority

192. <http://www.aarhus.be> which features the public consultations on plans or programmes that are organised at federal and/or regional level. It is also possible to find former consultations that were organized.

Flemish Region

193. www.milieubeleidsplan.be.

XXIV. EFFORTS MADE TO PROMOTE EFFECTIVE PUBLIC PARTICIPATION DURING THE PREPARATION BY PUBLIC AUTHORITIES OF EXECUTIVE REGULATIONS AND OTHER GENERALLY APPLICABLE LEGALLY BINDING RULES THAT MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT PURSUANT TO ARTICLE 8

Federal Authority

194. The federal level has set up the Federal Council for Sustainable Development, composed of civil society major stakeholders, which issues opinions to the Federal Authority on the federal policy for sustainable development. Since 1994, it has issued more than 100 opinions on planned regulations and policy.

195. The Council carries out tasks at its own initiative or at the request of the Ministers or Secretaries of State, the House of Representatives and the Senate. It can call upon public federal administrations and bodies to assist it in accomplishing its tasks and can consult anyone whose collaboration is deemed useful for the consideration of certain issues.

196. The Council issues an opinion within three months of the request for an opinion. In an emergency, a shorter time frame may be stipulated by the applicant, which can however not be shorter than two weeks.

197. The Council drafts an annual report of its activities. The Government must state the reasons for disregarding its opinions.

Walloon Region

198. See answer under article 7 and article 6, paragraph 1.

Brussels Capital-Region

199. Public participation is guaranteed by representative organizations brought together in the Brussels Environment Council. See AERBC of 15 March 1990 regulating the creation, functions and composition of the Environment Council for the Brussels Capital Region (published in the *Moniteur Belge*, 6 July 1990).

Flemish Region

200. Draft regulations are submitted for advice to the MINA Council, the Flanders Social and Economic Council (SERV) and the Flemish Commission for Spatial Planning, mainly composed of social groups and experts.

There is a similar regulation at provincial and municipal level.

XXV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 8

201. No information was provided under this heading.

XXVI. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 8

Brussels Capital-Region

202. The opinions of the Environment Council are not binding on the public authorities, who must nevertheless justify any decision running counter to the Council's opinions. These opinions are available on www.cerbc.be in addition to the schedule and agendas of the Council's meetings.

XXVII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 8

Federal authority:

203. See <http://www.belspo.be/frdocfdd>: website of the Federal Council for Sustainable Development, and <http://www.info-durable.be>: all the latest Belgian news on sustainable development.

XXVIII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO JUSTICE IN ARTICLE 9

Federal authority

Article 9, paragraph 1

204. The following measures apply:

- (a) The law of 5/8/2006 created a Federal Appeal Committee for access to environmental information. It exercises its mission independently and neutrally;
- (b) The reconsideration procedure is free of charge;
- (c) If an administrative decision to refuse access to information is quashed, it is binding on the administrative authority. Both the opinion of the Committee on Access to Administrative Documents and the decision of the Council of State must be substantiated.

Article 9, paragraph 2

205. The parties concerned have available several judicial appeals avenues:

- (a) Appeals to the Council of State;
- (b) Appeals to the Court of Arbitration;
- (c) Appeals to the President of the Court of First Instance, who gives emergency interim rulings;
- (d) Proceedings before a magistrates' courts;
- (e) Proceedings before civil courts.

206. In environmental matters, there is a further appeal avenue for an action on discontinuance under the Law of 12 January 1993 concerning a right to bring an action in environment matters (see subpara. (c) below).

Article 9, paragraph 3

207. Apart from the conventional avenues for judicial and administrative remedy, the Law of 12 January 1993 is of particular relevance. It states that if "the President of the Court of first instance, at the request of the Public Prosecutor, an administrative authority or a corporate entity

(non profit-making association with an environmental protection corporate aim) establishes the existence of an act, even one for which punitive action has been taken, that seriously threatens to infringe one or more laws, regulations or decrees on environmental protection, the President can order the discontinuance of acts that have started to be carried out or can impose measures aimed at preventing such acts from being carried out or at preventing damage to the environment (...)."

Article 9, paragraph 4

208. The following constitutional provisions are relevant to judicial remedies:

(a) Article 148 provides that "Court hearings shall be public, unless disclosure is a threat to public order or decency; and, in this case, the court shall declare this in a ruling";

(b) Article 149 reads: "Grounds must be given for any ruling. Rulings must be declared at a public hearing";

(c) Article 151 stipulates that "Judges shall be independent in carrying out their judicial duties. The Public Prosecutor's Office shall be independent in carrying out individual investigations and proceedings (...)."

Article 9, paragraph 5

209. In order to ensure that persons without sufficient resources are entitled to effective access to justice, the Judicial Code establishes two legal assistance schemes that apply to both civil and criminal matters. Articles 446 bis and 508, paragraphs 1 to 23, of the Judicial Code and royal implementing decrees firstly concern primary and secondary legal assistance. Secondly, legal aid is provided under articles 664 to 699 of the Judicial Code.

210. Primary legal assistance entails the provision of practical and legal information, as well as of an initial legal opinion or referral to a specialized body or organization. Primary legal assistance is available to both individuals and corporate entities. Secondary legal assistance means legal assistance to an individual in the form of a detailed legal opinion or legal assistance, whether or not in the context of formal proceedings, and assistance with a court action, including legal representation.

211. Legal aid, on the other hand, consists in full or partial exemption from stamp duties and registration charges, and other costs of proceedings, and is available to litigants who do not have adequate income to cover the cost of judicial or extrajudicial proceedings.

212. It should be noted that appeal procedures (application to set aside, appeals on a point of law or fact and appeals to the court of cassation) are not free of charge for litigants.

213. The Federal Public Justice Service draws up the annual statistics of courts and tribunals, including, for environmental dossiers, the number of environmental cases registered by the civil court's office and environmental cases referred to examining magistrates.

Walloon Region

214. Besides the Appeals Commission for access to information (administrative body) described in paragraph 71, the petitioner can take his claim to exercise his rights to the various courts and jurisdictions of the judicial system.

Article 9, paragraph 2, 3, 4 and 5

215. See the federal government's report www.belgium.be concerning appeals to the Court of Arbitration and Conseil d'Etat (Council of State – the highest administrative authority, functions as the administrative tribunal of last resort).

Brussels Capital Region:

Article 9, paragraph 1

216. The following measures apply:

(a) Ordinance of 18 March 2004 on evaluating the impact of certain plans and programmes (published in the *Moniteur Belge*, 30 March 2004).

(b) Ordinance of 30 March 1995 on disclosure by the administration (published in *Moniteur Belge*, 23 June 1995).

Flemish Region

Article 9, paragraph 1

217. An appeal, free of charge, with an independent administrative appeal body is possible, against any decision, after the expiry of the decision period, or in the event of the decision being carried out reluctantly. Higher appeal with the Council of State. The decisions are binding: the authority has to implement the decision as soon as possible and at the latest within forty calendar days (Art. 20, 22, 24, § 3 and 26 DOB).

Article 9, paragraph 2

218. An administrative and judicial appeal is possible for the environmental and town planning licence.

Article 9, paragraph 3

219. Challenging acts and omissions by private persons and public authorities which contravene environmental law, is possible via various administrative and judicial appeal procedures when the above-mentioned administrative appeal procedures are exhausted.

Article 9, paragraph 4

220. If the appeal body complies with the appeal, publication is granted. If the public authority does not implement the decision, the appeal body will carry out the decision itself as soon as possible. The appeal body informs the applicant of its decision in writing, by fax or by e-mail within a period of 30 days. Decisions of the appeal body are public.

Article 9, paragraph 5

221. In principle, each decision mentions the possibilities of appeal, otherwise the submission term of the appeal does not commence. Decisions on licences mention the possibilities of appeal. Similar provisions were also included in other sectoral environmental legislation.

XXIX. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 9

Federal authority

222. On 10 March 2005, the federation of Flemish environmental associations (Bond Beter Leefmilieu - BBL) presented a communication to the Compliance Committee with respect to the Convention's provisions to contest Belgium's application of the pillar relating to access to justice. The Compliance Committee issued its conclusions in June 2006; they reveal a potential violation by Belgium of the Convention's provisions as regards the right of environmental protection associations to appeal to the Council of State. For the Committee, it is clear that the Council of State must clearly establish a new jurisprudence as regards access to justice for environmental organizations.

223. With a view to helping Belgium fully meet its obligations in terms of access to justice, the Committee recommends that it should initiate two specific measures:

- (a) Take the appropriate legislative measures (laws coordinated according to the Council of State) so that environmental protection associations no longer have to endure a restrictive jurisprudence;
- (b) Promote knowledge of the Aarhus Convention; in particular, its provisions in terms of access to justice, within the Belgian legal system.

224. In order to meet the recommendations of the Compliance Committee, various initiatives were launched by the Federal Minister of the Environment in 2006.

- (a) As regards the promotion of the Convention within the legal system, the training programme for magistrates and legal trainees for the years 2006 and 2007 included a part dedicated exclusively to the Convention in its thematic training on the environment, with an emphasis on the pillar relating to access to justice;
- (b) As regards the part relating to the adaptation of Belgian standards, two legislative initiatives were taken, both initiated thanks to the behest of the Federal Minister of the Environment. However, it should be noted that it has not yet been possible for Parliament to approve this law given that it was dissolved on 1 May 2007, just before the federal elections.

Therefore this private bill should be reinstated at the level of the federal government or the new Parliament.

XXX. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 9

225. The Federal Public Justice Service draws up annual statistics of courts and tribunals, including for environmental dossiers: the number of environmental cases registered by the office of the civil court, the number of environmental cases referred to examining magistrates, and so on.

XXXI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 9

226. <http://www.just.fgov.be>.

XXXII. CONTRIBUTION OF THE IMPLEMENTATION OF THE CONVENTION TO THE PROTECTION OF THE RIGHT OF EVERY PERSON OF PRESENT AND FUTURE GENERATIONS TO LIVE IN AN ENVIRONMENT ADEQUATE TO HIS OR HER HEALTH AND WELL-BEING

227. The consecration of the three procedural rights in the Convention, and their countrywide implementation by the Regions and the Federal Authority, give full meaning to article 23, paragraph 4, of the Constitution which sets forth “the right to the preservation of a healthy environment”.
